

Supreme Court, U.S.
FILED

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MICHAEL RODAK, JR., CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1978

No. 77-1497

STATE OF ARKANSAS *Petitioner*

vs.

LONNIE JAMES SANDERS *Respondent*

ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF ARKANSAS

APPENDIX

PETITION FOR WRIT OF CERTIORARI
FILED APRIL 19, 1978

CERTIORARI GRANTED
OCTOBER 10, 1978

Req. No. 78-5269

50 Copies

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[T. 22]
IN THE CIRCUIT COURT OF
PULASKI COUNTY, ARKANSAS
FOURTH DIVISION

STATE OF ARKANSAS	PLAINTIFF
VS.	NO. CR 76-1661
LONNIE SANDERS, DAVID RAMBO	DEFENDANTS

HEARING ON MOTION TO SUPPRESS

BE IT REMEMBERED, that on this 31st day of January, 1977, the same being a day of the regular September 1976 Term of the Pulaski Circuit Court, Fourth Division, before the Honorable Richard B. Adkisson, Judge of said Court, this cause came on to be heard, the State being represented by the Honorable Richard N. Moore, Deputy Prosecuting Attorney, the Defendant Rambo being represented by the Honorable John W. Achor, Chief Deputy Public Defender, and the Defendant Sanders being represented by the Honorable William C. McArthur, thereupon, the following proceedings were had and done, as follows:

THE COURT: Is the same Rambo that's been convicted in this — Where is the defendant?

MR. ACHOR: No, sir.

MR. McARTHUR: I don't think so, this boy is from Dallas. [T. 23]

MR. ACHOR: Your Honor, the defendant, Rambo, is

represented by the Public Defender. Mr. McArthur represents defendant Sanders. Mr. McArthur has filed a Motion to Suppress. I have not filed one, although I intend to, because I haven't gotten the defendant up here to be present during the hearing.

THE COURT: Well, isn't that him over there?

MR. ACHOR: No, that's Mr. Sanders. What I would like to do is join in Mr. McArthur's Motion to Suppress, be permitted to cross examine the witnesses and add something to it, if my defendant gets here, to keep from having the same hearing twice.

THE COURT: All right.

MR. McARTHUR: I think the same evidence would be adduced in both, either case, your Honor.

THE COURT: Okay. All right. Now, is this the same Rambo that has had prior convictions in this Court?

MR. ACHOR: No, sir. No, sir. This defendant, as I understand, has no prior record. He is from Dallas, Texas. [T. 24]

THE COURT: Okay.

MR. ACHOR: It's had plenty of time to go through. Maybe the Little Rock police don't —

THE COURT: (Interposing) Let's don't —

MR. ACHOR: Oh, I didn't realize we're on the record.

THE COURT: It gets expensive when you start paying for

it, all these gratuitous comments. Would you like to go forward with the evidence? Mr. Moore, you may proceed.

THEREUPON,

DETECTIVE DAVID ISOM, a witness called by and on behalf of the State (being first duly sworn), was examined and testified, as follows:

DIRECT EXAMINATION
BY MR. MOORE

Q. State your name and occupation for the record, please.

A. David Isom, Little Rock Police Department.

(THEREUPON, David Isom was duly sworn by the Court.)

A. All right. Detective Isom, were you so employed on April 23rd, 1976? [T. 25]

A. Yes, sir. I was.

Q. And, on that date, did you have occasion to talk to an informant?

A. Yes, I did.

Q. And was this face to face or by phone conversation?

A. First time it was face to face and the second time it was by phone.

Q. All right, sir. And, did the informant give you certain

information at that time?

A. Yes, sir.

Q. And, acting upon that information, what did you do then?

A. I went to the Little Rock Municipal Airport and set up surveillance there waiting for a Lonnie Sanders to return from Dallas, Texas, I believe.

Q. All right. Had you had occasion to talk to this informant at, on previous occasions?

A. Yes, I had.

Q. And, had he given you information on these previous occasions?

A. Yes, sir. He had.

Q. Have you had occasion to check the reliability of this information whether or not it was true and accurate?

A. Yes, sir. I have.

Q. All right, sir. Did anybody accompany you to the Little Rock Airport that evening? [T. 26]

A. Officer Mize and Officer Tuck.

Q. And, did you have occasion to see Lonnie Sanders at the airport that evening?

A. Yes, sir. I did.

Q. And, do you see Lonnie Sanders in Chambers today?

A. Yes, sir. The black male with the brown coat and the blue pants.

MR. MOORE: Let the record reflect he pointed to the defendant.

Q. All right, sir. When did you first see Mr. Sanders that evening?

A. Let me see. It was approximately sixteen thirty hours the flight arrived, I'm sorry, sixteen thirty-five hours and he came out of gate No. 1. He was about the third or fourth person coming off the plane.

Q. All right, sir. And, did you keep Mr. Sanders under observation after he got off the flight?

A. Yes, sir. I did.

Q. And, what did he do?

A. He, when got off the flight he went down to the luggage area in the terminal and there he met with a black male, which was identified as Mr. Rambo, and there was a large crowd down there and Mr. Sanders went over to the luggage area and picked up a green suitcase and brought it back and gave it to Mr. Rambo. Then, he went and got into a taxicab. [T. 27]

Q. Now, you say who. Which defendant are you referring to?

A. Mr. Sanders went over and picked up a green suitcase and brought it back to Mr. Rambo.

Q. All right. And, who got in the taxicab?

A. Mr. Sanders.

Q. What did Mr. Rambo do at that time?

A. He stood there for a few minutes until the crowd dispersed and then he went and got into the same taxicab.

Q. All right. And, where was the suitcase put?

A. In the trunk.

Q. All right, sir. And, what did you do at that time?

A. We followed the taxicab down East Roosevelt and stopped the cab.

Q. All right, sir. And, did you place the occupants of the cab under arrest at that time, specifically Mr. Rambo and Mr. Sanders?

A. Both subjects. Yes, sir.

Q. All right. Did you also confiscate the suitcase in question at that time?

A. Yes, sir. I did.

Q. Did you have occasion to inspect the suitcase?

A. Yes, sir.

Q. What was found inside the suitcase?

A. Approximately ten pounds of marijuana, what appeared to be green vegetable matter, what appeared to be marijuana. [T. 28]

Q. All right. And, up to this point and time, had you had any information whatsoever relating to Mr. Rambo?

A. Yes, sir. No, sir. No, sir. Not Mr. Rambo, no.

Q. All right. The information you had received from the informant had only dealt with Mr. Sanders?

A. That is correct.

Q. Had the — Up to the point when you went to the airport when you saw Mr. Sanders get off of this particular flight when he picked up this particular suitcase, was this exactly how the informant had told you that he would be arriving and what he would be bringing with him?

A. Yes, sir. That's the information I received, be a green suitcase involved.

Q. All right. And, for the record, was there anything else, were there any other drugs found as a result of this arrest at a later time?

A. Yes, sir. Approximately an ounce of heroin.

Q. All right. And, who found this?

A. Officer Beaumont.

Q. And, where was this found?

A. It was found in his patrol unit after he transported Mr. Rambo to the Little Rock Police.

MR. MOORE: All right, sir. You may ask. [T. 29]

THE COURT: Just a second. You state that this is based on this arrest, the probable cause was furnished by a confidential informant?

A. Yes, sir.

THE COURT: And, I believe you stated that he has furnished you information in the past that has proven reliable?

A. Yes, sir. It has.

THE COURT: Did this information he had furnished in the past ever result in a person being convicted of an offense?

A. Yes, sir. On January of that year Mr. Sanders was arrested for possession of marijuana through the information provided by the same informant and there was an arrest in '75 and another arrest in '76 involving narcotics and all of them were convicted. I think Mr. Sanders was placed on probation on his and the other two, the information they gave us it was reduced to a probationary period, if they provided us information.

THE COURT: But, the information was reliable?

A. Yes, sir.

THE COURT: Proved reliable in each of the three cases? [T. 30]

A. Yes, sir.

THE COURT: What information did the informant advise you? What did he tell you was his knowledge?

A. On which particular — On all the cases involved?

THE COURT: Of this case we have under consideration today.

A. The informant gave me information earlier that Mr. Sanders had sent an empty green suitcase to Texas on a flight.

THE COURT: And, how did he say that he knew this?

A. Just by knowing Mr. Sanders. That was the way he was —

THE COURT: (Interposing) Hearsay?

A. Yes, sir.

THE COURT: All right. Go ahead.

A. That, that was the way he was transporting his marijuana back and forth.

THE COURT: All right.

A. Send an empty suitcase by itself and go down and pick it up and bring it back.

FURTHER DIRECT EXAMINATION

BY MR. MOORE:

Q. Had the informant given you the information as to the

exact [T. 31] time of the flight that Mr. Sanders was allegedly returning on?

A. Yes, sir. He told me he would be on, be arriving at sixteen thirty-five hours and arriving on American Airlines at Gate No. 1.

Q. This was in fact the flight that Mr. Sanders came in on that day?

A. Yes, sir. It was.

Q. And, the general appearance of the suitcase did match the description the informant had given you earlier?

A. Yes, sir. A large, green suitcase.

CROSS EXAMINATION
BY MR. McARTHUR

Q. Well, let's go back a little bit. I believe you answered this just a moment ago, but the source of this informant's information was hearsay. Is that correct?

A. Yes, sir.

Q. All right. You did not attempt to check out whether or not this was reliable prior to the arrest?

A. Well, there was no way I could have checked on the suitcase.

Q. Why is that?

A. Well, it would already be sent.

Q. Well, are you saying there'd be no record of that, if he'd shipped something?

A. I'm sure there would be. [T. 32]

Q. Did you check to see?

A. No, sir. I did not.

Q. All right. What was Mr. Sanders carrying when he got off of the airplane?

A. Let me see. He was carrying a brown, leather suitcase and also a smaller blue suitcase.

Q. Okay. Now, you say that he met Rambo at the baggage area. Had you noticed Mr. Rambo before that time?

A. No, sir, I had no knowledge of Mr. Rambo at all.

Q. You don't recall seeing him before you got to the luggage area?

A. No, sir. I was just watching Mr. Sanders.

Q. Where is Mr. Rambo from?

A. I believe he is from Texas. I —

Q. (Interposing) Did he give you an address when you talked to him?

A. Let me see. No, sir. I don't have his address here.

Q. All right.

A. I don't have his case file.

Q. Well, did the green suitcase have one of these tickets on it that the airline puts on it, a luggage check ticket?

A. I'm sure it did. I didn't seize that or anything. I didn't pay that much attention to it.

Q. Would you still have it, if it had been on there?

A. If it was on the suitcase, if it's still attached to the suitcase, I'm sure — [T. 33]

Q. (Interposing) You still have the suitcase?

A. Yes, sir. The lab does.

Q. Did either of these individuals have airline tickets on their person when you arrested them?

A. If they did, I don't have them. I'm sure they did. He had already got off the plane. I don't have any tickets.

Q. You didn't seize that or check that to see if there was a stub that would be attached to his airline ticket?

A. No, sir. I didn't. I didn't check it.

Q. All right. I believe you testified that you saw defendant Sanders walk over to the area where the baggage comes in, pick up the green suitcase and hand it to Rambo and then left. Is that correct?

A. Yes, sir. He went and got into a cab.

Q. All right. A short time thereafter Rambo took the bag, went out. I assume that he or the cab driver put it in the trunk. Is that right?

A. Yes, sir.

Q. All right. And, they drove off —

A. (Interposing) Yes, sir.

Q. — in the same cab?

A. Yes, sir.

Q. When you stopped them some whatever number of blocks it was away, did you ask either of them permission to look in the bag? [T. 34]

A. No, sir.

Q. You didn't ask either of the two men?

A. No.

Q. All right. You just took them out of the car, put them in police units and seized the bag?

A. Yes, sir.

Q. Did you seize the two bags that Mr. Sanders was carrying?

A. Yes, sir. I checked the bags and they looked to be the same, about the same size clothing as Mr. Rambo would wear, much smaller men's clothing and would not fit Mr. Sanders.

Q. Do you have those?

A. No, sir. They were stored upstairs. I don't know if they were released to anyone or not, they were stored.

Q. Okay. You don't know whether you still have them or not, then?

A. No, sir. I could check.

Q. All right. Did you have either one of them try the articles on?

A. No, sir. I didn't.

Q. When you took them out of the vehicle, did you search their persons?

A. Yes, sir.

Q. Did you find anything on either person?

A. I searched Mr. Sanders and I didn't find anything on him.

Q. You found nothing on him? [T. 35]

A. No, sir.

Q. You found nothing in the two bags that he was carrying, other than clothing?

A. That is correct.

Q. No narcotics?

A. No.

Q. No drugs of any sort?

A. No, no drugs.

Q. Did you have the — The driver of the cab, do you have his name?

A. No, sir. I don't. He was an older, black gentleman. I didn't get his name.

Q. All right. Was he taken to the police station or was he turned loose there at the scene?

A. He was turned loose. We just took the bags.

Q. Okay. Was the, this green suitcase, was it done any certain way? Did it have ropes on it or straps of any sort?

A. No, sir, just an ordinary green suitcase.

Q. All right. Was it locked?

A. No, sir.

Q. In other words you could open it without any difficulty?

A. The best I remember, you just opened it up. I don't think there were any locks on it at all. [T. 36]

Q. Did you check to see whether either of the parties had keys on them that would have unlocked—

A. (Interposing) No, sir.

Q. — or locked this bag?

A. No, sir. If I remember correctly, it just snapped right open.

Q. All right. Now, the alleged heroin you found was in a, was in a marked unit that assisted you at the scene?

A. That's correct.

Q. Who was in that unit?

A. Mr. Rambo.

Q. How long after the arrest was this heroin found?

A. He was taken directly to the narcotics office and placed in an office and just as soon, just long enough for the officers to get back out and search his car he found the heroin.

Q. Okay. Were both units searched?

A. Yes, sir. I believe they were. That's the standard procedure down there.

Q. All right. Was anything found in the unit that had transported Mr. Sanders?

A. No, sir.

Q. All right. Do you know who did the search on Rambo, the Rambo subject?

A. No, sir. Detective Tuck, I believe. I'm not for sure.

Q. Tuck. Okay. [T. 37]

A. It was either him or Officer Beaumont. I don't know.

Q. But, apparently nothing was found when they searched him initially?

A. No, sir.

Q. Or at least if there was, nobody said anything about it. All right. Did you check — Probably did — I think you've probably already answered this, too. Did you look at the ticket that Lonnie Sanders had, airline ticket?

A. I'm sure I did. I don't remember what it was.

Q. Do you even know whether or not he'd come from Dallas?

A. No, sir. To be honest with you, I don't.

MR. McARTHUR: That's all I have at this time.

CROSS EXAMINATION BY MR. ACHOR

Q. Now, your confidential informant didn't give you any information concerning Rambo?

A. No, sir. I knew nothing of David Earl Rambo.

Q. Now, Rambo was transported to the station by Beaumont?

A. Yes, sir.

Q. Is that correct? And, Beaumont brought him to the police station?

A. The narcotics office, yes, sir.

Q. And, after he was in the narcotics office, he went back out and found the heroin? [T. 38]

A. Yes, sir.

Q. Do you know who claimed the suitcase with the clothes in it?

A. I think Mr. Rambo, it was his suitcase.

Q. Why did you arrest Mr. Rambo?

A. Well, the, Officer Beaumont advised me before he went on duty he searched the backseat of his vehicle and there was no narcotics found and he brought these subjects to headquarters and searched them again at which time he found the heroin.

Q. Well, when was — You never arrested — Didn't you arrest him on the scene?

A. Yes, sir.

Q. Why did you arrest him out there?

A. Possession of marijuana.

Q. Well, what were the facts that led you to believe that he was —

THE COURT: (Interposing) Mr. Achor, I believe he just went over that.

MR. ACHOR: I'm talking about Rambo.

THE COURT: I know, but he stated that Rambo got the suitcase and took it and put it in the cab, got it from Defendant Sanders over there. [T. 39]

Q. Is that why you arrested him?

A. Yes, sir.

Q. You arrested him then because Sanders handed him a suitcase and he put the suitcase in the car?

A. Yes, sir.

Q. That's all the knowledge you have of Rambo?

A. Yes, sir. I didn't know who he was.

Q. Plus, everything else the confidential informant had told you about Sanders only?

A. Yes, sir.

THE COURT: All right. Call your next witness.

MR. McARTHUR: I have one other question I failed to ask him.

FURTHER CROSS EXAMINATION
BY MR. McARTHUR

Q. Officer, Isom, when did you receive this information from the informant? When did you begin receiving the information, or did you just talk to him once?

A. I talked to this — About this particular case?

Q. Yes.

A. It was sometime earlier, a day or so earlier in reference to the green suitcase being sent. I contacted him twice on this particular day.

Q. At what time of day? [T. 40]

A. Once was in the morning and once, I think, was about an hour or so before the flight arrived.

Q. All right. You did not submit this to a judge for a search warrant?

A. No, sir. I did not.

MR. McARTHUR: That's all.

Q. (MR. McARTHUR, Continuing) One further question. Did you take any fingerprints from this suitcase?

A. No. I didn't.

Q. You didn't take any or there were none?

A. I didn't take any.

MR. McARTHUR: That's all I have.

FURTHER CROSS EXAMINATION BY MR. ACHOR

Q. What about the rubber container that the heroin was in? Was it dusted for prints?

A. No, sir.

MR. ACHOR: That is all.

MR. McARTHUR: I haven't anything further of this witness, your Honor. [T. 41]

THE COURT: Let me get this straight, now. Did you see this Defendant Sanders claim the suitcase?

A. Yes, sir. He walked over and got the green suitcase, took it back over to Mr. Rambo, stood there and Mr. Rambo, he went and got in a taxicab. The crowd kind of dispersed and Mr. Rambo picked the suitcase up and went and got in the same taxicab with Mr. Sanders.

THE COURT: Okay.

MR. McARTHUR: Let me make one thing clear for record. I think everybody knows how the Little Rock Airport operates.

FURTHER CROSS EXAMINATION BY MR. McARTHUR

Q. There is no claiming, is there? You don't show a ticket or anything to pick up baggage? Anybody could walk up and pick it up?

A. Yes, sir. That is correct.

THE COURT: Call your next witness.

(Witness Excused)

MR. MOORE: Officer Tuck. [T. 42]

THEREUPON,

DETECTIVE (CHARLES) TUCK, a witness called by and on behalf of the State, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION
BY MR. MOORE

Q. Would you state your name and occupation for the record, please?

A. Detective Tuck, Little Rock Police Department.

Q. Detective Tuck, were you so employed on April the 23rd, 1976?

A. Yes. I was.

Q. And, did you have occasion on that date to go to the Little Rock Airport?

A. Yes, sir. I did.

Q. Were you at the airport looking for a specific subject?

A. Yes, sir.

Q. And, who was that subject?

A. Lonnie Sanders.

Q. Do you see Mr. Sanders in Chambers today?

A. Yes, sir.

MR. MOORE: Let the record reflect he points to the defendant.

Q. (MR. MOORE, Continuing) All right, sir. Were you in the company of Detective Isom at this time? [T. 43]

A. Yes, I was.

Q. And, who else was with you?

A. Detective Mize.

Q. All right, sir. Where did you first view the defendant, Mr. Sanders that day?

A. When he got off of the plane and came out of the gate.

Q. All right, sir. And, did you keep him under observation in that area?

A. Yes, sir.

Q. And, what did you see him do?

A. He was waiting on a bag down there. He met a —

MR. McARTHUR: (Interposing) Objection to the con-

clusion, your Honor.

THE COURT: Sustained.

A. He met a subject downstairs, I believe. They picked up a green bag. He picked up a green bag and handed it to another black male that was with him, then they went to a cab.

Q. All right. Do you recall who went to the cab first?

A. Detective — Mr. Sanders.

Q. All right, sir. Well, did you know Mr. Sanders by sight when he got off of the plane? Did you know that is who you were looking for at that time?

A. I knew his name. I don't believe I knew him. [T. 44]

Q. All right. And, at the time you saw him meet this other gentleman down in the baggage area, did you know the other fellow at that time?

A. No, sir.

Q. All right. Subsequent to the time after the defendant, Mr. Sanders and the other fellow got into the cab, did you go with Detective Isom at that time to follow the cab?

A. Yes, sir.

Q. All right. And, were you involved with Detective Isom in the subsequent arrest of the two defendants?

A. Yes, I was.

Q. Did you have occasion to search either Mr. Sanders or

the other subject who turned out to be Mr. Rambo?

A. I don't remember. I may have patted down Mr. Sanders.

Q. Was anything, to your knowledge, found on either subject, on their person?

A. No, sir.

Q. And, after the arrest had been made, were the subjects transported to another location?

A. To the Vice and Narcotics Office.

Q. All right. Did you personally see this suitcase had been picked up at the airport?

A. Yes, sir.

Q. Did you see what was contained in this suitcase?

A. Ten plastic bags with green vegetable matter. [T. 45]

Q. All right, sir. And, did you also have occasion to see any other type of narcotic drug?

A. Later, Officer Beaumont got a condom filled with brown powder out of the backseat of his car.

Q. All right. Was that your total involvement with the arrest and the seizure of the drugs on that date?

A. Yes.

Q. Had you talked to this confidential informant any time that day or was all the conversation between Detective Isom and the informant?

A. I hadn't talked to him.

MR. MOORE: You may ask.

CROSS EXAMINATION
BY MR. McARTHUR

Q. Officer Tuck, do you recall looking at the airline tickets of either of these parties?

A. No, sir.

Q. Do you recall whether either of them had a baggage check stub on their possession?

A. I don't remember.

Q. Did you, was there anything else found in this green suitcase?

A. A pair of panties.

Q. A pair of panties. Belong to either one of these men, that you know of?

A. Not that I know of. [T. 46]

Q. All right. Is that all that was in there besides the ten bags of marijuana?

A. That's all I recall.

Q. All right. Was there any identification on this green bag at all? Initials or —

A. There may have been a claim check or something but I don't remember it.

Q. All right.

A. I know there wasn't any initials or name.

Q. Okay. Did you or anyone else to your knowledge check with American Airlines to see whether or not either of these individuals had in fact checked this bag at the point of origination?

A. I didn't. I don't know if anybody else did or not.

Q. How did you happen to know that this was Mr. Sanders getting off of the airplane? Did someone point him out to you and identify him?

A. Yes.

Q. Who was that?

A. Detective Isom.

Q. All right. How long do you suppose the Rambo subject stayed in the area of the baggage department, or whatever it is called down there, before he went out and got in the cab?

A. Ten or fifteen minutes.

Q. That long. All right. Were there other cabs parked in the [T. 47] area where the cab was that he got in?

A. I don't remember.

Q. At the airport don't they route cabs through a, where they all line up in one area with a starter that controls who gets in one cab or the other when they move out?

A. I don't know.

Q. In the main lobby where the baggage comes in there are doors directly across the building from the claim check area or wherever you pick up your baggage and one, it would be, I guess, directly South of that area, be the left as you face the baggage department. Is that correct?

A. Yes, sir.

Q. Which door did Mr. Sanders go out? Do you recall?

A. The South door.

Q. He went out the end door?

A. Yes, sir.

Q. All right. Which door did Mr. Rambo go out?

A. South door.

Q. All right. Is that where the cabs were?

A. That's where the cab they went in was. That's where their cab was, the cab they got into.

Q. Okay. Were there not a fairly large number of cabs in that area?

A. I don't remember.

Q. Do you recall whether or not this cab he got into was the [T. 48] first cab in line?

A. I don't remember. I don't remember seeing any other cabs out there.

Q. All right. How many policemen were there?

A. Three.

Q. Three of you?

A. Yes, sir.

Q. After you left the airport, did you call for additional assistance?

A. A black and white stopped the cab.

Q. All right. On your request? Yours or Isom's?

A. Yes, sir.

Q. All right. What did you do when you stopped the cab? What was done at that point?

A. We got the cab driver out and asked him if he'd mind opening his trunk, which he did, and we looked in the suitcase. We got Mr. Sanders out first and got him up against the cab and got the cab driver. He opened the trunk for us and when we opened, the first suitcase we opened was the one with the green vegetable matter in it, then we opened the other ones to check them.

Q. Did you find anything illegal in that?

A. No, sir.

Q. Do you recall whether there were any initials or anything on that, any identification of any sort on those bags?
[T. 49]

A. No, sir. I don't believe there was.

Q. Did you ask either Rambo or Sanders' permission to search any of these bags?

A. I don't remember. I don't believe I even talked to them at all.

Q. All right. Did you have a search warrant?

A. No, sir.

Q. Oh, one other question. Did you have them under arrest at the time?

A. At what point?

Q. At the time you looked in the bags?

A. No, sir.

Q. They were arrested after that?

A. Yes, sir.

CROSS EXAMINATION
BY MR. ACHOR

Q. You say that you got Sanders out of the car, the cab and put him up against the cab?

A. Yes, sir.

Q. Did you do the same thing to Rambo?

A. Yes, sir.

Q. Did you search Sanders?

A. I believe I patted him down, but I don't recall.

Q. All right. Were you there when Isom searched Rambo?

A. Yes, sir. I would have been there. [T. 50]

Q. Did you search Rambo?

A. No, sir. I don't believe I did. Wait a minute. I believe that the uniformed officer patted Rambo down.

Q. He was there, too?

A. Yes, sir.

Q. When was Rambo there?

A. At the same time.

Q. After you found the marijuana?

A. Yes, sir.

MR. ACHOR: I don't have any further questions.

(Witness Excused)

THE COURT: Call your next witness.

MR. MOORE: Officer Mize.

THEREUPON,

OFFICER (RONNIE) MIZE, a witness called by and on behalf of the State (being first duly sworn), was examined and testified, as follows:

DIRECT EXAMINATION
BY MR. MOORE

Q. Will you state your name and occupation for the record, please?

A. Officer Mize, Little Rock Police Department. [T. 51]

Q. Officer Mize, were you so employed on April the 23 —

(THEREUPON, Ronnie Mize was duly sworn by the Court.)

THE COURT: Go ahead.

Q. Were you so employed on April the 23rd, 1976?

A. Yes, sir. I was.

Q. And, what division were you assigned to at that time?

A. Narcotics.

Q. All right, sir. On that date did you have occasion to go to the Little Rock Airport?

A. Yes, sir. I did.

Q. And, who was that subject?

A. Lonnie Sanders.

Q. Do you see Mr. Sanders in Chambers today?

A. Yes. I do.

MR. MOORE: Let the record reflect he points to the defendant.

Q. All right, sir. Where did you first observe Mr. Sanders on that date?

A. I was at the airport as he came out of Gate One.

Q. All right. Did you keep the subject under observation from that point on? [T. 52]

A. Yes, I did.

Q. And, where did he go when he came out of the gate?

A. He went to the baggage area where you pick up the baggage downstairs.

Q. All right, sir. Did he meet anyone in the baggage area?

A. Yes. He did. Another black male.

Q. All right. At that point did you know who this other black male was?

A. No. I didn't.

Q. All right, sir. And, what occurred after he apparently met with this black male?

A. They talked for awhile and the other black male went over and picked up the green suitcase, or Mr. Sanders picked up the green suitcase and give it to the other black male and left.

Q. All right. Mr. Sanders left?

A. Yes.

Q. All right. And then, what did the other black male do?

A. He went out and got in the cab.

Q. All right. Did you see where Mr. Sanders went, when you said he left?

A. He went to the cab.

Q. All right. Now, when you say the other black male that had the suitcase went to the cab, was this the cab that Mr. Sanders was in? [T. 53]

A. Yes.

Q. Did they leave the airport?

A. Uh huh.

Q. All right. Did you go with Detective Isom and Detective Tuck?

A. No. I stayed at the airport terminal because they run out and jumped in the car that followed the cab and I couldn't get to it, to the car.

Q. So, in other words, they left you behind?

A. Yes.

MR. MOORE: I have no further questions.

CROSS EXAMINATION
BY MR. McARTHUR

Q. So, you weren't there when the search was made?

A. No.

Q. Did you or anyone else to your knowledge check to see who might have had a baggage check on them?

A. I didn't.

Q. All right. You are aware the baggage on an airline has a check on it, a stub on it with a number? You don't recall anybody finding one of these on either one of the parties?

A. Well, I don't. I didn't search Mr. Sanders myself and I didn't check myself. I was left behind and didn't get there until later. [T. 54]

Q. All right. Now, you said one thing and you changed it.

You said that Mr. Sanders went over to the baggage area. Are you certain of that?

A. Uh huh.

Q. You're positive of that?

A. Uh huh.

Q. How long had they been standing there waiting before the baggage came, approximately?

A. Oh, I'd say five or ten minutes.

Q. Did Mr. Sanders have luggage in his hand?

A. I don't believe, I don't recall if he did or not.

Q. After Mr. Rambo had this green bag, how long did he wait around before he went out and got in the cab?

A. He went to the cab.

Q. At the same time?

A. No. He went first.

Q. Oh, Rambo went first?

A. Uh huh.

Q. Carrying the bag?

Q. Uh huh.

Q. And then, Mr. Sanders joined him later?

A. Uh huh.

Q. What was Mr. Sanders doing in the meantime?

A. He was just standing around for a few minutes and then he walked out. It wasn't for as long as a few minutes, just for a little while. [T. 55]

Q. You see the man sitting at the end of the couch here. Do you know who that is?

A. Uh huh.

Q. What is his name?

A. That is Lonnie Sanders. I knew his last name but his first name, I know him, I'd seen him before.

Q. All right. And that same man, the same man you are talking about at the airport?

A. Yes, sir.

Q. Okay. Do you know whether anybody checked with the airlines to see who may have checked luggage or may have shipped luggage or anything of that nature?

A. No, sir.

MR. McARTHUR: No further questions.

CROSS EXAMINATION
BY MR. ACHOR

Q. All you saw Rambo do was he handed the suitcase by Sanders and walk to the cab?

A. Yes, sir.

Q. You didn't know anything about him before that?

A. No.

Q. First time you ever had seen him or had any knowledge of him?

A. Yes, sir. [T. 56]

MR. ACHOR: That's all.

(Witness Excused)

THE COURT: Call your next witness.

MR. MOORE: When I learned of the hearing late Friday I subpoenaed Officer Beaumont. To my knowledge he was never served.

THE COURT: I think he's out there right now.

MR. MOORE: Did he show up?

MR. McARTHUR: I was told that he did.

(Pause in Proceedings)

THE COURT: He is not here. What did he do?

MR. MOORE: He was with the black and white unit that

pulled the cab over and —

THE COURT: (Interposing) Could probably stipulate to his testimony. [T. 57]

MR. McARTHUR: He is probably the one that searched Mr. Rambo, too?

THE COURT: He is probably the one that searched Rambo but —

MR. MOORE: (Interposing) Your Honor please, for the purposes of this hearing —

THE COURT: (Interposing) For the purpose of this hearing—

MR. MOORE: — I would stipulate that to my knowledge that nothing was found on Mr. Rambo's person. The heroin charge arose from the fact that he was transported in that unit and heroin was found after he had been transported in that unit, found in the unit itself, not on Mr. Rambo's person by Officer Beaumont.

THE COURT: Okay. We will take his testimony later.

MR. McARTHUR: I'm not sure it will have anything to do with this motion anyway. Have you rested?

MR. MOORE: I've rested. [T. 58]

MR. McARTHUR: Your Honor, I would like to recall Officer Isom for just a couple of questions.

THE COURT: All right.

MR. McARTHUR: After that, could I have about a two or three minute recess to check on one matter and let you know whether or not I want to call any further witnesses.

THEREUPON,

OFFICER DAVID ISOM, a witness called by and on behalf of the Defense, being first duly sworn, was examined and testified, as follows:

DIRECT EXAMINATION
BY MR. McARTHUR

Q. Officer, you're the same Officer Isom who testified earlier. Is that correct?

A. Yes, sir.

Q. You were placed under oath at that time. Is that right?

A. Yes, sir.

Q. Okay. Officer Isom, would you describe this green suitcase for us, please?

A. To the best of my knowledge, it's a large green Samsonite type suitcase, ordinary suitcase.

Q. Hard-finished type suitcase? [T. 59]

A. Yes, sir.

Q. Anything distinguishing about it?

A. Nothing.

Q. Was it dark green, light green?

A. Just a medium green, I believe.

Q. Standard color?

A. Yes, sir.

Q. Nothing unusual about it?

A. Just an ordinary green suitcase.

Q. All right. But there was nothing that would set that apart from any other green, Samsonite suitcase?

A. As far as suitcases go, no, sir.

THE COURT: Anything else?

MR. McARTHUR: That's all. As far as I'm concerned he can go.

(Witness Excused)

THE COURT: Call your next witness.

MR. McARTHUR: May I have a two or three minute recess, your Honor?

MR. MOORE: May the officers be excused? [T. 60]

MR. McARTHUR: As far as I'm concerned, they may be excused.

(THEREUPON, the hearing was in recess for ap-

proximately five minutes.)

MR. ACHOR: Judge, I don't know if they established any credibility for this informant and, therefore, I think that we ought to be entitled to the name and to examine him.

MR. McARTHUR: The only thing, the only testified concerning the informant —

THE COURT: Do you have any testimony?

MR. McARTHUR: No, I have no further testimony.

THE COURT: Okay.

MR. ACHOR: Of course, we won't finish that until we get Beaumont on.

THE COURT: We are finished, as far as the marijuana case is concerned, which is what I assumed we are trying.

MR. ACHOR: No, sir. They've got them charged in the same [T. 61] Information so, therefore, all they can convict him of is heroin in that case, isn't it?

THE COURT: Possession of marijuana with intent to deliver.

MR. McARTHUR: Your Honor, they have got one Information charging both men in one Information with possession of marijuana.

THE COURT: Sanders is obviously — I mean, that would — The proof, unless they've got something else, would be insufficient, as far as he is concerned on the heroin.

MR. McARTHUR: Well, they don't have him charged with the heroin but they have both offenses charged in the same indictment. They have them both charged with possession of a controlled substance with intent to deliver, to wit: Marijuana. And, in count two they charged David Earl Rambo with possession of heroin with intent to deliver.

THE COURT: Okay. Well, I'll —

MR. McARTHUR: (Interposing) We can't charge — I would have to object to trying that charge with my client there.

THE COURT: All right. I'll grant a severance then. That is what you are asking for? [T. 62]

MR. McARTHUR: Yes, sir.

THE COURT: All right. Count two will be severed, be reset on that date, the 3rd of February. All right. And, I find that in this case that the Motion to Suppress should be and is hereby denied. Be ready for trial then on Thursday.

MR. McARTHUR: Yes, sir, we're ready.

MR. ACHOR: On delivery of —

THE COURT: Delivery of marijuana.

MR. ACHOR: Possession with intent to deliver.

(THEREUPON, the hearing on Motion to Suppress was concluded.)

Exhibit No. 1

Text of Arkansas Supreme Court opinion
reported at Page 595, Arkansas Reports, Vol. 262

Lonnie James SANDERS v. STATE of Arkansas

CR 77-171

559 S.W. 2d 704

Opinion delivered December 19, 1977
(Division I)

Appeal from Pulaski Circuit Court, Fourth Division,
Richard B. Adkisson, Judge; reversed and remanded.

McArthur & Johnson, for appellant.

Bill Clinton, Atty. Gen., by: *Robert J. Govar*, Asst. Atty.
Gen., for appellee.

GEORGE HOWARD, JR., Justice. The fundamental inquiry to be made by the Court in this case is whether or not the warrantless search of appellant's suitcase by Little Rock Police officers is reasonable under the circumstances involved.

FACTS

Appellant, Lonnie James Sanders, was charged by information by the Prosecuting Attorney of the Sixth Judicial District with possession of a controlled substance (marijuana) with intent to deliver in violation of Act 590 of 1971, as amended.

The charge was the culmination of an intensive surveillance of appellant by the Little Rock Police Department, hereafter referred to as the police, just prior to and during his scheduled arrival at the Little Rock Municipal Airport on April 23, 1976.

The police had been advised by a confidential informant

some time prior to April 23, 1976, that appellant had sent an empty green suitcase to Dallas, Texas, on a flight and that in a day or two, appellant would go to Dallas to pick up the suitcase and that the suitcase would be containing marijuana.

On the morning of April 23, 1976, the informant advised the police that appellant would be arriving at the Municipal Airport of Little Rock, Arkansas, at 4:35 p.m. on April 23, 1976, and would deplane at Gate 1 and that appellant would have the green suitcase containing the contraband.¹ The police set up a surveillance at the Municipal Airport awaiting the arrival of appellant. As appellant exited Gate 1, appellant was observed carrying two bags and immediately exited the terminal and placed the two bags in the trunk of a waiting taxicab. Appellant returned to the luggage area inside the terminal and took a green suitcase from the luggage rack and passed it to one David Rambo. Appellant immediately left the terminal and got into the compartment of the cab. Rambo waited inside the terminal near the luggage area a few minutes and he subsequently exited the terminal and placed the green suitcase in the trunk of the cab and took a seat in the compartment of the vehicle. As the taxi departed the airport, the police followed in an unmarked vehicle. As the cab proceeded down East Roosevelt Road, a separate unit of the police, upon request of the officers following the taxi, stopped the taxicab and the officers following the cab requested the cab driver to open the trunk of the vehicle. Another officer directed appellant and Rambo to step out of the vehicle and stand to the side of the taxicab; police officers, without the consent of the appellant or Rambo, opened the green suitcase and found 9.3 pounds of marijuana. Appellant and Rambo were then placed under arrest and appellant was placed in one police unit and Rambo in another and were taken to the Little Rock Police Department.

On January 31, 1977, a hearing was conducted on

¹The informant had supplied information to the police in the past which had proven to be reliable and rewarding in the police's effort to cope with the drug problem.

appellant's Motion to Suppress the evidence which was denied by the trial court.

On February 3, 1977, appellant was found guilty by a jury as charged and was given ten years in the Department of Correction and a fine of \$15,000.00.

APPELLANT'S CONTENTIONS

Appellant alleges the following as the grounds for reversal of his conviction:

1. The trial court erred in denying appellant's Motion to Suppress the evidence gained as a result of an illegal search.
2. The trial court erred in allowing the co-defendant to present evidence of a statement allegedly made by appellant and further erred in allowing the co-defendant to present rebuttal evidence directed toward appellant.
3. The trial court erred in admitting into evidence the subject of this charge when it was not properly identified.

THE SEARCH

Appellant's contention that the warrantless search of his green suitcase, under the existing circumstances, was unreasonable and consequently in violation of the Fourth Amendment to the United States Constitution has merit. We conclude that the trial court erred in denying appellant's Motion to Suppress the evidence confiscated from the suitcase and, therefore, appellant's conviction is reversed.

It is well recognized that warrantless searches are per se unreasonable unless they fall within some established exception to the warrant requirement of the Fourth Amendment to

the United States Constitution. One of these exceptions is probable cause coupled with exigent circumstances. But probable cause alone is insufficient for a warrantless search to square the mandate of the Fourth Amendment against unreasonable searches. *United States v. Chadwick*, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538; *Coolidge v. New Hampshire*, 403 U.S. 443, 91 S. Ct. 2022; *Horton v. State*, 262 Ark. 211, 555 S.W. 2d 226; *Perez v. State*, 260 Ark. 438, 541 S.W. 2d 915.

The information supplied to the police by the confidential informant is adequate to support the State's claim that the police had probable cause to believe that appellant's green suitcase contained a controlled substance when the police confiscated the suitcase and opened it. For the confidential informant, who had supplied reliable information in the past, had advised the police of appellant's mode and manner of transporting marijuana into the state; the police were given the type and color of the suitcase that was being used by the appellant; the approximate date that the empty suitcase was sent to Dallas was supplied to the police; the date and time of appellant's arrival at the Little Rock Municipal Airport was within the immediate knowledge of the police; the name of the commercial airline, as well as the flight number that appellant would be traveling on was revealed to the police by the informant; and the police were also told the gate number that appellant would exit when he deplaned.

Moreover, appellant, at the time, was a resident of Little Rock and was no stranger to the police. The search of the green suitcase can not be justified under the "automobile exception" as claimed by the State. It must also be remembered that appellant's mode of transportation from the Little Rock Municipal Airport was by a local taxicab; the green suitcase was locked in the trunk of the taxicab²; the police took posses-

²The evidence in this case supports the conclusion that the relationship between the suitcase and the taxicab is coincidental, and the suitcase was not a part of the area from which appellant might gain possession of a weapon or destroy the evidence contained in the suitcase. See: *Chimel v. California*, 395 U.S. 752, 763 (1969).

sion of the suitcase while appellant was in the compartment of the taxicab and appellant was later taken into immediate custody and placed in a police car; the confiscation of appellant's suitcase took place shortly after 4:35 p.m. in a metropolitan area. Indeed, there is nothing in this set of circumstances that would lend credence to an assertion of impracticality in obtaining a search warrant, or support the State's contention that "mobility of the object to be searched (the green suitcase)" justified a warrantless search. See: *Perez v. State*, supra; *Tygart v. State*, 248 Ark. 125, 451 S.W. 2d 225, cert. den. 400 U.S. 807, 91 S. Ct. 50; *Coolidge v. New Hampshire*, supra.

To paraphrase the United States Supreme Court's observation in *United States v. Chadwick*, supra, the factors which diminish the privacy aspects of an automobile do not apply to appellant's suitcase. Luggage contents are not open to public view, except as a condition to a border entry or common carrier travel; nor is luggage subject to regular inspections and official scrutiny on a continuing basis. Unlike an automobile, whose primary function is transportation, luggage is intended as a repository of personal effects. In sum, a person's expectations of privacy in personal luggage are substantially greater than in an automobile.

Nor does the suitcase's mobility justify dispensing with the added protections of the Warrant Clause. Once the Little Rock police had seized appellant's suitcase from the trunk of the taxicab and had the suitcase under their exclusive control, there was not the slightest danger that the suitcase or its contents could have been removed before a valid search warrant could be obtained. The initial seizure of appellant's suitcase, the validity of which appellant does not contest, was sufficient to guard against any risk that evidence might be lost. With the suitcase safely immobilized, it was unreasonable to undertake the additional and greater intrusion of a search without a warrant.

CO-DEFENDANT OFFERS AS EVIDENCE STATEMENT ALLEGEDLY MADE BY APPELLANT

Over strenuous objections of appellant, on the grounds of relevancy, the trial court permitted Jonas Rambo to offer the following evidence in support of appellant's co-defendant, David Rambo. "He (appellant) told me if I'd let David (the co-defendant) take the rap for a year, he'd get him out of jail. First told me he had a lawyer for both of them, then went to court and found he didn't have a lawyer for David, but he told me if I'd let David take the rap for both of them he would go ahead. He'd make enough money to get a good lawyer and get him out."

We hold that the trial court did not commit error in admitting this testimony inasmuch as the testimony was quite relevant inasmuch as David Rambo, in testifying in his own behalf, corroborated the testimony of law enforcement officers as to what transpired at the airport after appellant and the co-defendant arrived from Dallas. It was David Rambo's contention that appellant was completely unknown to David Rambo before the two men met at the Dallas, Texas, airport, while on the other hand, appellant claimed that he and David Rambo were cousins, and that he had no knowledge that the suitcase contained marijuana, but he had agreed to carry the bag once the two reached Little Rock in return for \$5.00 that appellant had agreed to pay him. It is obvious that David Rambo was seeking to convince the jury that he had participated in the drug running operation unknowingly and that his only function in the scheme was to take the rap for appellant in this case appellant's activities were exposed and criminal charges resulted. Moreover, appellant specifically claimed that he had never seen the suitcase containing the drugs until Rambo placed the suitcase in the taxicab to be used in leaving the airport. In addition, Jonas Rambo supported his son's (David Rambo) testimony and rebutted the testimony of appellant. Jonas Rambo testified that, contrary to appellant's contention, the two defendants were not related. See: Rule 401, Arkansas Uniform Rules of Evidence.

Appellant also claims that the trial court committed error in permitting Jonas Rambo to testify in behalf of his son, David Rambo, after David Rambo and appellant had completed presenting evidence in support of their respective cases. This contention is without merit inasmuch as it is well settled that a large discretion is vested in the trial judges as to the time of introducing testimony. Consequently, reversals will not be ordered unless it is shown that this discretion has been abused to the prejudice of the objecting party. No prejudice has been demonstrated. See: *Marks v. State*, 192 Ark. 881, 95 S.W. 2d 634.

Reversed and remanded.

We agree: HARRIS, C.J., and FOGLEMAN, HOLT, and HICKMAN, JJ.

Exhibit No. 2
Text of Appellant's Argument, Point No. 1,
in Brief Submitted to Arkansas Supreme Court

Supreme Court of Arkansas

Lonnie James SandersAppellant

vs. No. CR 77-171

State of ArkansasAppellee

APPEAL FROM
PULASKI COUNTY CIRCUIT COURT
FOURTH DIVISION

Hon. Richard B. Adkisson, Judge

ABSTRACT AND BRIEF
FOR APPELLANT

McARTHUR AND JOHNSON
Suite 500 - 300 Spring Building
Little Rock, Arkansas 72201
Attorneys for Appellant

ARGUMENT

I.

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE EVIDENCE GAINED AS A RESULT OF AN ILLEGAL SEARCH.

Officer David Isom received information from a confidential informant that appellant had sent a green suitcase to Texas. A few days later, on April 23, 1976, he was again in contact with the informant and was told that appellant was returning from Texas by airline and would arrive at the Little Rock Airport at 4:35 PM. The source of the informant's information was hearsay (T. 30). The officer did not attempt to verify the information in any way, but relied on the fact that the informant had previously given reliable information that led to misdemeanor convictions. Further the officer did not attempt to obtain a search warrant for appellant or for whatever he might have in his possession upon his arrival.

At 4:35 PM on April 23, 1976, Officer Isom and others observed appellant deplane and make his way through the airport to a cab outside, where he deposited the two bags he was carrying. They then

observed him return to the baggage claim area and meet co-defendant Rambo. They testified that he then took a green suitcase from the rack and handed it to Rambo and then left. Rambo shortly left the area and entered the same cab after placing the green suitcase in the trunk of the cab. The cab was shortly stopped, the suitcase seized, opened and searched and marijuana was found. Appellant was then arrested and charged.

Involved herein is a warrantless search of the persons and personal properties of appellant and his co-defendant. Even though a vehicle was involved here, this is not a vehicular search as contemplated in the usual cases. In this case, the usual "exigent circumstances" surrounding the search of a vehicle are not present. The officers had a great deal of prior information concerning the situation and had ample time to obtain a search warrant had they sought one. A complete search of the transcript will reveal no explanation as to why the officers determined that a warrant was unnecessary. In *Coolidge v. New Hampshire*, 403 U.S. 443, 29 L. Ed. 2d 564, 91 Sup. Ct. 2022, it was stated that a warrantless seizure is not justified unless exigent circumstances excuse the failure to obtain a warrant. In *Perez v. State*, 260 Ark. 438, 541 S.W. 2d 915, it was stated that warrantless searches of an automobile can be justified because of the mobility factors where other

warrantless searches would be unreasonable. Appellant maintains exigent circumstances to be absent in this case excusing the failure to obtain a warrant.

The only other possible justification for the search herein would be that it was associated with a lawful arrest. Police can arrest lawfully if they have reasonable cause to believe that the person has committed a felony or if any offense is committed in his presence. Rule 12.1 of the Arkanaas Rules of Criminal Procedure allow a warrantless search incidental to a lawful arrest to obtain evidence of a crime or to seize contraband. However, Rule 12.2 limits the scope of such search to the person of the defendant and personal property within his immediate control. Appellant maintains that the officers herein lacked reasonable cause to believe that appellant was committing a felony and they did not observe the commission of any type of offense in their presence. The sole ground upon which they acted was the relaying of hearsay information by an informant who had in the past provided some minor information that had proved to be reliable. No effort was made by the officers to verify any of the information except their observation of appellant arriving at the airport. The police had no idea from where the informant had gotten his information and, even though they could have feasibly done so, they took no

steps to support the reliability of the informant by independent investigation as required. Even if the arrest was proper, apparently Rule 12.2, supra, would not justify this seizure and carte blanche search.

Appellant maintains that the search and seizure herein is patently unreasonable and further is unreasonable in that the police determined not to get a warrant even though there was ample time to do so. For this reason, appellant maintains prejudicial error to have been committed and prays the Court reverse his conviction.

Exhibit 3
Text of Appellee's Argument, Point No. 1,
in Brief Submitted to Arkansas Supreme Court

Supreme Court of Arkansas

Lonnie James SandersAppellant

vs. No. CR 77-171

State of ArkansasAppellee

AN APPEAL FROM
PULASKI COUNTY CIRCUIT COURT
FOURTH DIVISION

Hon. Richard B. Adkisson, *Judge*

BRIEF FOR APPELLEE

BILL CLINTON
Attorney General
By: ROBERT J. GOVAR
Assistant Attorney General
Justice Building
Little Rock, Arkansas 72201
Attorneys for Appellee

Req. No. 77-8782

25 Copies

ARGUMENT

I.

THE TRIAL COURT DID NOT ERR IN DENYING APPELLANT'S MOTION TO SUPPRESS EVIDENCE OBTAINED AS A RESULT OF A LEGAL SEARCH OF A VEHICLE.

Appellant Lonnie James Sanders was convicted of possession of 9.3 pounds of marijuana with intent to deliver, in violation of Ark. Stat. Ann. § 82-2617(a)(1)(ii). Prior to trial appellant filed a motion to suppress the use at trial of the marijuana on the grounds that the evidence was obtained as a result of an unlawful search and seizure. After an evidentiary hearing, the trial court denied appellant's motion to suppress.

The search objected to was lawful, even though no search warrant had ever been issued, as a search based on probable cause and the exigent circumstances existing, which obviated the necessity for obtaining a search warrant.

Acting on information received from a reliable informant, members of the Little Rock Police Department staked out the Little Rock Airport. The

officers observed their suspect, appellant, and his codefendant Rambo disembarking from an American Airlines flight from Dallas, Texas. (T. 73, 74, 75)

The two men were observed retrieving a green suitcase from the baggage area, then leaving the airport in a taxicab. A few blocks away, the taxicab was stopped by the law enforcement officers. The resulting search of the vehicle revealed that the green suitcase contained 9.3 pounds of marijuana. (T. 75, 76)

Admittedly the officers did not obtain a search warrant prior to stopping and searching the vehicle and seizing the illicit drugs. On appeal appellant argues that the warrantless search of the vehicle was illegal and that the marijuana seized as a result of that search was improperly admitted into evidence.

The Fourth Amendment to the United States Constitution does not act as a total ban on searches and seizures, only those searches and seizures which are unreasonable. *Carrol v. United States*, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925); *Maxwell v. Stephens*, 229 F. Supp. 205, affirmed 348 F. 2d 325, cert. denied 86 S. Ct. 532, 382 U.S. 1000, 15 L. Ed. 2d 490* (1964).

The absence of a search warrant does not necessarily render the search and seizure unreasonable. If the search and seizure were based on probable cause and there existed exigent circumstances which made obtaining a warrant prior to conducting the search impractical and unreasonable, then the search and subsequent seizure were reasonable and were not unlawful. *Chambers v. Maroney*, 399 U.S. 42, 90 S. Ct. 1975, 26 L. Ed. 2d 419 (1970); *Carrol v. United States*, 267 U.S. 132, 45 S. Ct. 280, 69 L. Ed. 543 (1925); *United States v. Pollard*, 466 F. 2d 1 (10th Cir. 1972), cert. denied, 409 U.S. 1127, 93 S. Ct. 946, 35 L. Ed. 2d 259 (1973). The search in the present case involved the search of a motor vehicle. Warrantless searches of automobiles, because of their mobility, may be reasonable, when under the same circumstances, the search of a home, store or other stationery property would not be. *Cooper v. California*, 386 U.S. 58, 87 S. Ct. 788, 17 L. Ed. 2d 730 (1967); *Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949); *Perez v. State*, 260 Ark. 438, 541 S.W. 2d 915 (1976).

The mobility of the object to be searched is a significant factor to consider in determining whether exigent circumstances are present and justify a warrantless search of that object. Warrantless searches of vehicles under exigent cir-

cumstances are specifically authorized by Rule 14.1 of the Arkansas Rules of Criminal Procedure.

Appellant properly cites *Coolidge v. New Hampshire*, 403 U.S. 443, 29 L. Ed. 2d 564, 91 S. Ct. 2022 (1971) for the proposition that a warrantless search of a vehicle is unconstitutional unless exigent circumstances are present which make it impracticable to obtain a warrant.

However, the present case is clearly distinguishable on its facts from the *Coolidge* case, *supra*, relied on by appellant for reversal. The vehicle searched in the present case, unlike the one searched in *Coolidge, supra*, was known to be used for an illegal purpose, the transporting of illicit drugs, just prior to the time it was stopped and searched by the officers. In *Coolidge, supra*, the police had known for some time of the role of the vehicle in the crime being investigated. Here the officers did not realize that the taxicab would be used to transport illicit drugs until a few minutes before the search occurred. In the *Coolidge* case the vehicle searched was immobile and the defendant charged had no present control over the vehicle or its contents. In the present case, the vehicle was moving about the streets of Little Rock, with no apparent restraint on its movement. Within the time needed to secure a search warrant for the vehicle, the

marijuana could have easily been destroyed or distributed. *Coolidge, supra*, clearly is inapplicable to the fact situation of the present case.

It is appellant's contention that the police officers had probable cause and adequate opportunity to secure a search warrant prior to the search, and therefore exigent circumstances, which normally give validity to a warrantless search of a vehicle, were not present in this case. (Appellant's brief p. 48)

Assuming, and appellee certainly does not concede, that a search warrant could have been secured prior to appellant's arrival at the airport with the illicit drugs, that fact alone would not have nullified the exigent circumstances which arose when appellant sought to transport the illicit drugs in the taxicab.

In *Williams v. State*, Del. Supr. 331 A. 2d 380 (1975), officers, acting on information obtained through an authorized wire tap, staked out a motel room anticipating that a heroin delivery would be made there. The officers delayed securing a search warrant until their suspicions were corroborated by observation at the motel. At the point in time when their suspicions were corroborated, it became apparent that the suspects had completed their

negotiation and the suspects would soon be leaving with the goods. At this time exigent circumstances arose which required the officers to act without delay.

There, the court ruled that the warrantless search of the motel room was proper, and the fact that the officers intended to first secure a warrant, but failed to do so, did not render invalid the exigent circumstances which subsequently occurred and necessitated the warrantless search. See also *Thomas v. Parret*, 524 F. 2d 779 (8th Cir. 1975).

United States v. Ramirez, 513 F. 2d 72 (5th Cir. 1975) found that a warrantless search of a truck transporting marijuana was not unreasonable when DEA agents had knowledge of facts, four days prior to the search, which would have supported issuance of a search warrant. The court ruled that the fact that the DEA agent in charge may have had both sufficient time and probable cause to have obtained a warrant to search appellant's truck at some time earlier had no bearing on whether exigent circumstances existed at the time the agents conducted a warrantless search of the vehicle.

United States v. Sigal, 500 F. 2d 1118 (10th Cir. 1974) involved the warrantless search of an airplane which was being used to transport marijuana. The

court ruled that although the agents had sufficient probable cause to seek a search warrant at an earlier stage of the investigation, but failed to do so, they were not precluded from conducting the search somewhat later when exigent circumstances justified the search without a warrant.

The marijuana properly admitted into evidence in the present case was seized as a result of a lawful and reasonable search of the vehicle in which appellant was a passenger. Such a search and seizure is supported by case law and Rule 14.1 of the Arkansas Rules of Criminal Procedure when the officers are acting on probable cause and exigent circumstances are present which make obtaining a search warrant impracticable.

Probable cause in the present case consisted of the information provided the officers by a reliable informant and the observation by the officers at the airport which corroborated the informant's story.

Exigent circumstances arose when appellant, and codefendant Rambo, along with the suitcase containing the drugs, left the airport in the taxicab. At this time the drugs were in a mobile state and the two men could have easily distributed or destroyed the illicit goods if the arresting officers had not acted immediately.

Under these circumstances the resulting search and seizure were lawful and not unreasonable and the evidence obtained from the search was properly admitted into evidence at appellant's trial.